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**BEFORE THE ARIZONA CORPORATION COMMISSION**

Arizona Corporation Commission

**COMMISSIONERS****DOCKETED**

JUL 28 2008

MIKE GLEASON - Chairman  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
KRISTIN K. MAYES  
GARY PIERCE

DOCKETED BY

mn

In the matter of:

DOCKET NO. S-20581A-08-0108

KUYPOW, INC., an Arizona corporation  
(d/b/a/ "MO'S PROPERTIES &  
INVESTMENT GROUP"),

DECISION NO. 70439

MORRIS CLYDE KUYKENDALL  
(a/k/a/ "MO"), and

JUDY E. POWERS,

Respondents.

**ORDER**

Open Meeting  
July 17, 2008  
Phoenix, Arizona

**BY THE COMMISSION:**

On February 28, 2008, the Securities Division ("Division") of the Arizona Corporation Commission ("Commission") filed a Temporary Order to Cease and Desist and Notice of Opportunity for Hearing ("TC&D") against Kuypow, Inc. ("Kuypow"), Morris Clyde Kuykendall and his spouse Judy E. Powers (collectively "Respondents"). As a result of the TC&D, the Respondents were immediately ordered to cease and desist from violating the Arizona Securities Act ("Act").

On March 5, 2008, Affidavits of Service were filed by the Division, stating that the TC&D was personally served on Respondents on March 4, 2008. The Respondents did not file either a request for hearing or an answer to the TC&D as required by law.

On May 29, 2008, the Division filed a Motion to Set Restitution Amount and Administrative Penalty ("Motion").

\* \* \* \* \*

Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes, and orders that:

**FINDINGS OF FACT**

1. On February 28, 2008, the Division filed a TC&D against Kuypow, Morris Clyde Kuykendall and his spouse Judy E. Powers.

2. As a result of the TC&D, the Respondents were immediately ordered to cease and desist from violating the Arizona Securities Act ("Act").

3. On March 5, 2008, Affidavits of Service were filed by the Division, stating that the TC&D was personally served on Respondents on March 4, 2008. The Respondents did not file either a request for hearing or an answer to the TC&D as required by law.

4. On May 29, 2008, the Division filed its motion requesting the Commission to determine the amount of restitution and the amount of administrative penalty which should be paid by the Respondents.

5. Kuypow, d/b/a MO's Properties and Investment Group, is an Arizona corporation with its principal place of business located in Lake Havasu City, Arizona.

6. Morris Clyde Kuykendall, a/k/a MO, is an individual residing in Lake Havasu City, Arizona, and is the co-owner, president and chief executive officer of Kuypow.

7. Judy E. Powers is an individual residing in Lake Havasu City, Arizona, and is the co-owner, secretary, treasurer and director of Kuypow. In these capacities, she promoted, controlled and bore responsibility for Kuypow's business and financial affairs, including its investor solicitation activities.

8. Mr. Kuykendall and Ms. Powers are married and acted for their own benefit and for the benefit or in furtherance of their marital community.

9. From February 2006 to at least March 11, 2008, Respondents publicly offered and sold unregistered securities in the form of investment contracts and/or notes within and from Arizona, in part, by advertising on an Internet website known as Craig's List/Phoenix ("Craig's List").

1 Respondents sold a total of \$1,036,396.46<sup>1</sup> of the investments to at least 15 investors residing in  
2 Arizona and several other states.

3 10. On January 13, 2008, Respondents posted an advertisement for investors on Craig's  
4 list as follows:

5 \$2,500- \$5,000- \$10,000-\$25,000-\$35,000-\$50,000-\$100,000

6 10% 12% 14% 15% 16% 17% 18%

7 3 months – 6 months – 8 months – 12 months – 18 months – 24 months

8 Your choice! Here is how it works!

9 1<sup>st</sup> Pick out the amount you want to invest!

10 2<sup>nd</sup> Pick out the time you want to leave it in (months).

11 3<sup>rd</sup> Email us the information and we will calculate the interest and terms.

12 MO's Investment Group...has been investing in the local area since 2004, and we have  
13 over 28 investors that make great monthly interest payments from us!

14 All are loans that we receive are secured with real estate, equipment, vehicles.

15 Email us and we (sic) [will] be glad to send you (sic)...monthly investment  
16 opportunities..." Thank god for our investors...Thanks MO

17 11. Respondents posted similar advertisements for investors on Craig's List on January  
18 17, 2008, that stated:

19 MO's Investment Group are (sic) [looking] for a few good investors who want to make  
20 12% to 18% on their money. Interest paid monthly! 6 month or 1 year your choice! Call  
21 for more info.....

22 12. The principal investment amounts and purported profit percentages offered by  
23 Respondents varied. For instance, Respondents provided standard form investment solicitation  
24 materials to one potential Arizona investor that stated they were seeking investors to invest in  
25 various, generically titled "Opportunities," in part, as follows: (a) a \$5,000 investment with an  
26 annual return of 13 percent for 6 months, or \$325 in profit; (b) a \$50,000 investment with an annual  
27 return of 17 percent for 12 months, or \$8,500 in profit; (c) a \$75,000 investment with an annual  
28 return of 17 percent for 12 months, or \$13,500 in profit; or (d) a \$100,000 investment with an annual  
return of 18 percent for 12 months, or \$18,000 in profit.

...

<sup>1</sup> According to an affidavit signed by the Division's investigator in this case and attached to its Motion, the amount of investments sold by Respondents to investors was determined by the Division investigator during the course of his investigation.

13. Respondents' solicitation material did not state exactly how an investor's money would be invested by the Respondents in order to generate the promised profits. The materials also did not contain a description of Respondents' investment vehicle(s) or business operations(s).

14. Mr. Kuykendall represented to at least one potential Arizona investor that Respondents' business was "versatile"; and Mr. Kuykendall represented to at least one potential Arizona investor that all of the investments were secured by real estate and businesses.

15. According to Respondents' solicitation materials, an investment could be consummated by completing a standard form promissory note, and by making the principal investment payment via check, credit card or cash.

16. Mr. Kuykendall represented to at least one potential Arizona investor that Respondents already had 28 investors who are “making good money.” He failed to ask this potential investor if he/she could afford to lose all or a portion of their investment.

17. Respondents failed to inform offerees and investors that on or about August 24, 2000, Mr. Kuykendall pled guilty to a Class 3 Felony Theft charge in a criminal case filed against him in Mohave County Superior Court and, as a result, he was sentenced to 5 years of probation and ordered to repay \$60,650 in restitution to his theft victim.

18. Respondents' solicitation materials failed to disclose any risks associated with the investments including, but not limited to, the fact that an investor could lose all or a large portion of his/her principal Investment.

19. Taking into consideration known repayments, Respondents' investors are currently owed \$719,290.13.<sup>2</sup>

20. The Respondents are jointly and severally liable for the above violations of A.R.S. §§ 44-1841, 44-1842 and 44-1991.

## CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and A.R.S. §§ 44-1801, *et seq.*

<sup>2</sup> According to the investigator's affidavit attached to the Motion, the amount of restitution owed to investors was determined by the Division's investigator during the course of his investigation.

2. Respondents did not request a hearing pursuant to A.R.S. § 44-1972 and A.A.C. R14-4-307.

3. Respondents offered or sold securities within or from Arizona, within the meaning of A.R.S. §§ 1801(15), 44-1801(21), and 44-1801(26).

4. Respondents violated A.R.S. § 44-1841 by offering or selling securities that were neither registered nor exempt from registration.

5. Respondents violated A.R.S. § 44-1842 by offering or selling securities while neither registered as dealers or salesmen nor exempt from registration.

6. Respondents violated A.R.S. §44-1991 by (a) employing a device, scheme, or artifice to defraud, (b) making untrue statements or misleading omissions of material facts, and (c) engaging in transactions, practices, or courses of business that operate or would operate as a fraud or deceit. Respondents' conduct included:

A. Failing to disclose to offerees and investors that in 2000, Mr. Kuykendall was convicted of a Class 3 Felony and that, as a result, he was sentenced to 5 years of probation and ordered to repay \$60,650 to his theft victim.

B. Failing to inform offerees and investors of the risks associated with the investments including, but not limited to, the fact that an investor could lose all or a large portion of his principal investments.

7. Pursuant to A.R.S. § 25-215, the marital community of Respondents Kuykendall and Powers should be held liable for any Order of restitution and penalties ordered hereinafter.

8. Respondents' conduct is grounds for a cease and desist order pursuant to A.R.S. § 44-2032.

9. Respondents' conduct is grounds for an order of restitution pursuant to A.R.S. § 44-2032.

10. Respondents' conduct is grounds for administrative penalties under A.R.S. § 44-2036.

### **ORDER**

IT IS THEREFORE ORDERED, pursuant to A.R.S. § 44-2032, that Respondents, and any of Respondents' agents, employees, successors and assigns, permanently cease and desist from their actions in violation of A.R.S. §§ 44-1841, 44-1842 and 44-1991.

1 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032, that Respondents shall jointly  
2 and severally, pay restitution to the Commission in the amount of \$719,290.13. Any amount  
3 outstanding shall accrue interest at the rate of 10 percent per annum from the date of this Order until  
4 paid in full. Payment shall be made to the State of Arizona to be placed in an interest-bearing  
5 account controlled by the Commission. The Commission shall disburse the funds on a pro-rata basis  
6 to investors shown on the records of the Commission. Any restitution funds that the Commission  
7 cannot disburse because an investor refuses to accept such payment shall be disbursed on a pro-rata  
8 basis to the remaining investors shown on the records of the Commission. Any funds that the  
9 Commission determines it is unable to or cannot feasibly disburse shall be transferred to the general  
10 fund of the State of Arizona.

11 IT IS FURTHER ORDERED that, pursuant to A.R.S. § 44-2036, that Respondents shall,  
12 jointly and severally, pay an administrative penalty in the amount of \$100,000. Payment shall be  
13 made to the State of Arizona. Any amount outstanding shall accrue interest at the rate of 10 percent  
14 per annum from the date of this Order until paid in full. The payment obligations for these  
15 administrative penalties shall be subordinate to any restitution obligations ordered herein and shall  
16 become immediately due and payable only after restitution payments have been paid in full or upon  
17 Respondents' default with respect to Respondents' restitution obligations.

18 IT IS FURTHER ORDERED that a bankruptcy filing by any of the Respondents shall be an  
19 act of default. If any Respondent does not comply with this Order, any outstanding balance may be  
20 deemed in default and shall be immediately due and payable without further notice.

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1 IT IS FURTHER ORDERED that if any Respondent fails to comply with this Order, the  
 2 Commission may bring further legal proceedings against that Respondent, including application to  
 3 the Superior Court for an order of contempt.

4 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

6  
 7 *Laurel P. Hagan*  
 8 CHAIRMAN

*William M. McNeil*

COMMISSIONER

9 *Jeffrey H. Hatch*  
 10 COMMISSIONER

*Brian C. McNeil*  
 COMMISSIONER

*James L. Smith*  
 COMMISSIONER

11 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive  
 12 Director of the Arizona Corporation Commission, have  
 13 hereunto set my hand and caused the official seal of the  
 14 Commission to be affixed at the Capitol, in the City of Phoenix,  
 this 28th day of JULY, 2008.

15 *Brian C. McNeil*  
 16 BRIAN C. McNEIL  
 EXECUTIVE DIRECTOR

17  
 18 DISSENT \_\_\_\_\_

19  
 20 DISSENT \_\_\_\_\_  
 21 MES:db



1 SERVICE LIST FOR:

KUYPOW, INC., DBA MO'S PROPERTIES &  
INVESTMENT GROUP

2  
3 DOCKET NO.:

S-20581A-08-0108

4 KUYPOW, INC.  
5 3560 Challenger Drive, #108  
6 Lake Havasu City, Arizona 86406

7 Morris Clyde Kuykendall  
8 Judy E. Powers  
9 3177 Oro Grande Place  
10 Lake Havasu City, Arizona 86406

11 Janice Alward, Chief Counsel  
12 Legal Division  
13 ARIZONA CORPORATION COMMISSION  
14 1200 West Washington Street  
15 Phoenix, Arizona 85007

16 Matt Neubert, Director  
17 Securities Division  
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